

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into )  
 Acquisition Adjustment )  
 policy. )  
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DOCKET NO. 891309-WS  
 ORDER NO. 23376  
 ISSUED: 8-21-90

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 FRANK S. MESSERSMITH

NOTICE OF PROPOSED AGENCY ACTION

ORDER DISAPPROVING PROPOSED AMENDMENT  
TO ACQUISITION ADJUSTMENT POLICY

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

On November 17, 1989, the Office of Public Counsel (OPC) filed a petition to initiate rulemaking or, in the alternative, to initiate an investigation into this Commission's policy regarding acquisition adjustments. Our policy is that, absent extraordinary circumstances, the purchase of a utility system at a premium or discount shall not affect the rate base calculation. The purpose of this policy is to create an incentive for larger utilities to acquire small, troubled utilities. This has been our policy since approximately 1983 and, since that time, few utilities have had their rate bases changed as the result of a purchase at a premium or a discount.

The incentive that our policy provides to the acquiring utility is that we will let it earn a return on not just the purchase price, but on the rate base of the acquired utility. The acquiring utility also receives the benefit of depreciation

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ORDER NO. 23376  
DOCKET NO. 891309-WS  
PAGE 2

on the full rate base. The customers of the acquired utility are not harmed by this policy because rate base has not changed. In fact, the customers should derive certain benefits from the acquisition, such as:

1. increased quality of service;
2. lowered operating costs;
3. increased ability to attract capital for improvements;
4. a lower overall cost of capital; and
5. more professional and experienced managerial, financial, technical and operational resources.

Those utilities that are actively acquiring distressed utilities have found that our policy gives them the flexibility to make some purchases at a premium and still receive rate base treatment because of the balancing effect created by purchases made at a discount. In other words, multiple purchases at a discount have created a new incentive to purchase those troubled utilities that can only be purchased at a premium.

In its petition, OPC argued that our policy inappropriately places the burden upon Staff or OPC to justify why rate base should be established as the purchase price rather than net book value. OPC suggested that, when a system is purchased at a discount, absent a showing by the acquiring utility that recognizing any amount of rate base in excess of the actual purchase price is in the public interest, we should establish rate base at the purchase price. OPC argues that this would shift the burden of proof to the acquiring utility, where it rightfully belongs.

By Order No. 22361, issued January 2, 1990, we rejected OPC's petition to initiate rulemaking but granted its request to initiate an investigation into our acquisition adjustment policy.

As part of the investigation, Staff invited all interested persons to submit written comments regarding the acquisition adjustment policy. Staff also held an informal workshop to discuss the current policy and the changes recommended by OPC. Comments were submitted by, and the workshop was attended by representatives of, Jacksonville Suburban Utilities Corporation (JSUC), Southern States Utilities, Inc. (Southern States), and OPC.

ORDER NO. 23376  
DOCKET NO. 891309-WS  
PAGE 3

Southern States and JSUC each supported our current policy and suggested that OPC's proposed change would have a negative effect on future acquisitions of distressed utilities. Southern States also stated that the policy does, in fact, act as a powerful incentive to acquire these systems.

OPC, on the other hand, questioned whether we need to provide an extra incentive for utilities to pick up distressed systems. OPC suggested that a fair return on the acquiring utility's actual investment should be enough of an incentive. However, even assuming that an extra incentive is needed, OPC argued that we should place the burden on the acquiring utility to demonstrate whether the nonrecognition of a negative acquisition adjustment is the appropriate incentive and, if so, that the benefits discussed above will flow to the ratepayers.

OPC also argued that our current policy might actually harm the customers of an acquired utility, especially if the former owners have allowed the utility systems to become dilapidated. OPC argued that this would result in the customers paying a return on both the dilapidated plant and any plant constructed to replace it. OPC also argued that our policy is unfair because, not only do we allow the customers to pay a return on the difference between the purchase price and net book value, we also allow the acquiring utility to recover the full book value of the system from the customers through depreciation expense.

Upon consideration of the above, we do not believe that it would be appropriate to amend our acquisition adjustment policy. Not only might OPC's proposed change not benefit the customers of troubled utilities, it might actually be detrimental, by removing any incentive for larger utility companies to acquire distressed systems. Further, it appears that OPC is most concerned with our not recognizing a negative acquisition adjustment when the prior owner has allowed the plant to become dilapidated. It may, therefore, not be our policy, but the transfer filing requirements that need to be amended. In the meantime, however, we believe that these matters may be adequately addressed and developed through the use of interrogatories and other discovery methods.

It is, therefore,


ORDER NO. 23376  
DOCKET NO. 891309-WS  
PAGE 4

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's proposed amendment to this Commission's acquisition adjustment policy is hereby disapproved. It is further

ORDERED that this Order is issued as proposed agency action, but will become final unless an appropriate petition is filed with the Division of Records and Reporting by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that, subsequent to the expiration of the protest period, this Commission will issue either a notice of further proceedings, or an order indicating that the provisions of this Order have become final and effective and closing this docket.

By ORDER of the Florida Public Service Commission  
this 21st day of AUGUST, 1990.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

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ORDER NO. 23376  
DOCKET NO. 891309-WS  
PAGE 5

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on September 11, 1990.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.